

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ERIC TOLAND JOHNSTON,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:12CV148
(Judge Keeley)

STATE OF WEST VIRGINIA,
JUDGE DAVID SANDERS, and
HASSAN RASHEED,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 7]

On September 19, 2012, the pro se plaintiff, Eric Toland Johnston ("Johnston"), filed a claim pursuant to 42 U.S.C. § 1983. The Court referred this matter to United States Magistrate Judge James E. Seibert for initial screening and a report and recommendation in accordance with LR PL P 2. That same day, Johnston moved for leave to proceed in forma pauperis, and the Court issued Johnston a Notice of General Guidelines for Appearing Pro Se in Federal Court.

On September 24, 2012, Magistrate Judge Seibert issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that Johnston's complaint be dismissed for failing to state a claim under § 1983. In the alternative, Magistrate Judge Seibert also considered Johnston's claims under the rubric 28 U.S.C. § 2254, and found that under that provision, too, Johnston failed to state a claim for which relief could be granted.

ORDER ADOPTING REPORT AND RECOMMENDATION

The R&R also specifically warned Johnston that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. The parties did not file any objections.* Consequently, finding no clear error, the Court **ADOPTS** the Report and Recommendation (dkt. no. 7) to the extent that it recommended dismissal of Johnston's complaint, and **ORDERS** that this case be **DISMISSED WITHOUT PREJUDICE** and stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se plaintiff, certified mail, return receipt requested.

Dated: May 8, 2013.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

* The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).